

REMARKS

Claims 18, 21, 22, 24-30, 32, 34-40, 42 and 44-46 are pending in the application.

Claims 18, 21, 22, 24-30, 32, 34-40, 42 and 44-46 have been rejected.

Claims 18, 30, 40 and 44 have been amended.

Double Patenting

Claims 18, 30, 40 and 44 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, 10 and 14 of U.S. Patent No. 6,657,969.

A Terminal Disclaimer To Obviate A Double Patenting Rejection Over A Patent is being filed concurrently with this Response with regard to U.S. Patent Application Ser. No. 6,657,969 to obviate this rejection. Accordingly, Applicants respectfully request withdrawal thereof.

Rejection of Claims under 35 U.S.C. §112

Claims 18, 21, 22, 24-30, 32, 34-40, 42 and 44-46 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants respectfully traverse the rejection, in light of the amendments and remarks presented herein.

As an initial matter, Applicants respectfully submit that the order in which a set of claim limitations is recited is not binding, unless a specific order is specified in the claim, which is not the case with the pending claims. Moreover, as will be appreciated, not only do the pending claims avoid enumerating any particular order of the operations therein, no such order can be inferred from the language of the claim. For example, from the perspective of antecedent basis,

no conclusion can be drawn from the language of the claims with regard to any preferred order in which the operations claimed therein might be performed.

The fact that the order of the recited limitations is unconstrained is also intuitively correct, at least because the recited generating and requesting operations (as well as the limitations associated therewith) are independent of one another. The claimed generating operations generate data identifying a node at which add and/or drop operations are performed, and data regarding the format of in-transit data. The claimed requesting operation requests, from another node, the format of data transmitted over a link attached to that another node. Thus, claimed generating and requesting operations are independent of one another. In light of the foregoing, it will be appreciated that the order in which any of the claimed operations or features are recited is immaterial to the order those operations are performed.

Moreover, it will be appreciated that any statements in the Summary of the Invention are merely illustrations, examples of possible features of systems according to various embodiments of the claimed invention. Being illustrative in nature, such statements cannot be taken to be limiting, particularly with regard to any limitations recited in the claims or relationships therebetween.

Notwithstanding the foregoing arguments, but rather in the interests of advancing prosecution, Applicants have chosen to amend claims 18, 30, 40 and 44, in order to further clarify their language. Applicants respectfully maintain, however, that the order in which the limitations of these claims are recited is of no consequence. In fact, it should be appreciated that, in light of the foregoing, the amendments made hereby do not alter the scope of these claims in any way.

In light of the foregoing remarks, Applicants respectfully submit the rejection of claims 18, 21, 22, 24-30, 32, 34-40, 42 and 44-46 under 35 U.S.C. § 112, second paragraph, is overcome. Applicants therefore respectfully submit that claims 18, 21, 22, 24-30, 32, 34-40, 42 and 44-46 are in condition for allowance.

CONCLUSION

Applicants submit that all claims are now in condition for allowance, and an early notice to that effect is earnestly solicited. Nonetheless, should any issues remain that might be subject to resolution through a telephonic interview, the Examiner is requested to telephone the undersigned.

If any extensions of time under 37 C.F.R. § 1.136(a) are required in order for this submission to be considered timely, Applicant hereby petitions for such extensions. Applicant also hereby authorizes that any fees due for such extensions or any other fee associated with this submission, as specified in 37 C.F.R. § 1.16 or § 1.17, be charged to deposit account 502306.

I hereby certify that this correspondence is being submitted to the U.S. Patent and Trademark Office in accordance with 37 C.F.R. § 1.8 on May 5, 2009 by being (a) transmitted via the USPTO's electronic filing system; or (b) transmitted by facsimile to 571-273-8300; or (c) deposited with the U.S. Postal Service as First Class Mail in an envelope with sufficient postage addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, Virginia, 22313-1450.

/ Samuel G. Campbell, III /

Samuel G. Campbell, III

May 5, 2009

Date

Respectfully submitted,

/ Samuel G. Campbell, III /

Samuel G. Campbell, III
Attorney for Applicant(s)
Reg. No. 42,381
512-439-5084
512-439-5099 (fax)